

FILED BY CLERK

JUN 25 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0082-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
COREY LAMONT HOLLEMAN,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20064587

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Corey Holleman

Tucson  
In Propria Persona

HOWARD, Chief Judge.

¶1 Petitioner Corey Holleman challenges the trial court's summary dismissal of a petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P.,

alleging ineffective assistance of trial counsel. We will not disturb the court's denial of post-conviction relief unless we find it has clearly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 A jury found Holleman guilty of possessing a narcotic drug for sale, the trial court sentenced him to an enhanced, presumptive prison term of 15.75 years and this court affirmed his conviction and sentence. *State v. Holleman*, No. 2 CA-CR 2007-0243 (memorandum decision filed Aug. 26, 2008). He then filed a petition for post-conviction relief, alleging counsel had been ineffective in five respects: (1) allegedly failing to honor Holleman's request to testify at trial; (2) failing to move to preclude evidence of guns and ammunition found—along with a large quantity of cocaine and other items—in a home where Holleman had been staying; (3) failing to request a jury instruction on mere presence, Holleman's theory of defense at trial; (4) failing to request a jury instruction on simple possession as a lesser-included offense; and (5) allegedly failing to investigate the case thoroughly enough to determine whether large-sized clothing found in the master bedroom of the house could have fit and therefore belonged to someone other than Holleman.

¶3 In a long and thorough minute entry, the trial court reviewed Holleman's claims in depth and denied the petition without a hearing. It found Holleman had not stated a colorable claim of either deficient performance by counsel or resulting prejudice, *see Strickland v. Washington*, 466 U.S. 668, 689 (1984), and therefore was not entitled to an evidentiary hearing. *See Ariz. R. Crim. P. 32.6(c)*.

¶4 In his petition for review, Holleman does not challenge or even address the trial court's ruling and thus has not complied with Rule 32.9(c)(1), which governs the form and necessary contents of post-conviction petitions for review. Instead, he appears to assert an additional claim of ineffective assistance of post-conviction counsel. However, "[t]he United States Supreme Court has made clear that, at least when a defendant is entitled to a direct appeal with the assistance of counsel, there is no constitutional right to counsel or effective assistance in post-conviction proceedings." *State v. Krum*, 183 Ariz. 288, n.5, 903 P.2d 596, 600 n.5 (1995), citing *Coleman v. Thompson*, 501 U.S. 722, 755 (1991); *Wainwright v. Torna*, 455 U.S. 586, 587 (1982); *State v. Armstrong*, 176 Ariz. 470, 474-75, 862 P.2d 230, 234-35 (App. 1993). Consequently, we do not address Holleman's complaints about the representation of his post-conviction counsel. Nor would we review even a legitimate claim for relief that is raised for the first time in a petition for review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (petitioner must have presented claim to trial court before appellate court will consider on review).

¶5 Despite the deficiencies in Holleman's petition for review, we have examined the claims raised in his petition for post-conviction relief and the trial court's detailed discussion of those claims. We are satisfied the court has clearly identified and properly analyzed each of Holleman's allegations of ineffectiveness by trial counsel. We approve and adopt the court's minute entry and find no abuse of its discretion in denying relief. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow

any court in the future to understand the resolution[, n]o useful purpose would be served by this court[']s rehashing the trial court's correct ruling in a written decision").

¶6 The petition for review is granted; relief is denied.

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge